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(R75-427)

August 27, 1975

The Honorable James P. Walsh
Arizona State Senator
1552 West Vernon
Phoenix, Arizona 85007

Re: Durational Residency Requirements

Dear Senator Walsh:

In response to your letter of July 1, 1975, wherein you inquired as to the constitutionality of durational residency requirements in order to obtain employment with cities or towns, I would preface my remarks with these comments.

The law in this area has been changing quite rapidly during the past five years. To a certain extent, there are guidelines relating to the constitutionality of durational residency requirements. HOwever, because of certain legal requirements, each factual situation must be examined independently of all other factual situations, and then a determination may be made.

The foremost decision in the area of durational residency requirements is Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322 (1969). In this, and its companion cases, residence requirements were being challenged on a constitutional basis, i.e., denial of equal protection under the Fourteenth Amendment to the United States Constitution. The concept of a constitutional guarantee of a right to travel was discussed by the Supreme Court in numerous earlier decisions. It was not until United States v. Guest, 383 U.S. 745, 757-758, 86A S.Ct. 1170, 1178, 16 L.Ed.2d 239 (1966), that the Supreme Court elaborated on the constitutional basis for the right to travel from one state to another. Mr. Justice Stewart said:

> . . . The constitutional right to travel from one State to another, . . . occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized. . . .

> . . . That right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created. In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution. . . . 383 U.S. at 757-758.

The Court in Shapiro v. Thompson, supra, incorporated the above quote from United States v. Guest, supra, as the source of the right to travel interstate.

The Court after discussing the Equal Protection Clause, as well as the statutes involved therein, found that those statutes created an invidious classification based solely on whether or not the individual had met certain residency requirements. Mr. Justice Brennan, writing for the Court, expressed the position that in certain instances classifications based on residency were permissible; however, the Court established a very strict standard to be applied in determining whether or not such classifications were permissible. The Court said:

> . . . The waiting period provision denies welfare benefits to otherwise eligible applicants solely because they have recently moved into the jurisdiction. But in moving from State to State or to the District of Columbia appellees were excercising a constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional. 394 U.S. at 634.

The test set forth in Shapiro v. Thompson, supra, has been reiterated in both federal courts as well as state courts. The most recent Supreme Court decision in this area and, perhaps, the most familiar decision is Memorial Hospital v. Maricopa County, ___ U.S. ___, 94 S.Ct. 1076 (1974). In that case, Maricopa County was not statutorily obligated to provide nonemergency medical services to individuals who had not been residents in the county for one year prior to the nonemergency medical treatment. A constitutional challenge to the statutes involved resulted

in a reaffirmation of the position expressed in Shapiro v. Thompson, supra, wherein the Court acknowledged the constitutional right to freedom for interstate travel. The Court in Memorial Hospital v. Maricopa County, supra, also affirmed the standard to be applied in deciding whether or not the specific durational residency requirement statute created invidious classifications and was therefore unconstitutional as a violation of the Fourteenth Amendment Equal Protection Clause.

The progeny of Shapiro, supra, are hundred-fold. The durational residency requirement has been attacked in almost every situation in which that requirement exists. The following is a list of areas where durational residency requirements have existed and were the subject of litigation:

1.	Divorce applicants	57 A.L.R.3d 221
2.	Bar examinations	53 A.L.R.3d 1163
3.	Student voting rights	44 A.L.R.3d 797
4.	Elected public officers	37 A.L.R.3d 1338
5.	University out-of-state tuition fees	83 A.L.R.2d 4961

A review of the above-cited annotations indicates that, although the eventual outcome of a particular lawsuit may be different from a subsequent lawsuit, certain principles are universally applied. The basic principles are those set forth by the United States Supreme Court in Shapiro v. Thompson, supra, as reaffirmed in Memorial Hospital v. Maricopa County, supra; Dunn v. Blumstein, 405 U.S. 330 (1972); and Oregon v. Mitchell, 400 U.S. 112 (1971). Those cases and the annotations clearly point out that, after application of the general principles, a court must look to the particular circumstances involved to determine whether or not a compelling state interest exists which would justify the imposition of durational residency requirements.

State v. Wylie, 516 P.2d 142 (Alaska 1973), involved the issue which you raised in your letter. Alaska had a policy of giving preference to persons who had resided in Alaska for at least one year. The appellee moved to Alaska in 1972 and unsuccessfully sought state employment, although she was more than qualified for the position in dispute. Because she had not resided in Alaska for the

one year period, other individuals were given preference. The Court, after reviewing Shapiro v. Thompson, supra, Oregon v. Mitchell, supra, and Dunn v. Blumstein, supra, concluded that the statute in question created an invidious classification and served to penalize an individual who exercised her constitutionally guaranteed right. The Court then addressed the question of whether or not the durational residency requirement met the compelling interest test. Alaska advanced two justifications for their policy. The first was that the policy helped to reduce unemployment primarily among native residents. The second justification was that the policy more fully utilized Alaska's human resources. In answer to the first justification, the Court said:

> . . . It does not appear, however, that the employment preference furthers the purpose of reducing unemployment except by deterring the in-migration of persons from other states. The personnel rules in question do not increase the number of available state employment opportunities, but simply limit the universe of persons who may compete for them. To the extent that the personnel rules "lower unemployment" by fencing out competition from other states, the rules impermissibly discriminate against persons who have recently traveled to this state. . . . 516 P.2d at 149.

In response to the second argument, the Court said that justification based solely on fiscal economy was not a sufficient basis for sustaining classification based solely on residence. Accordingly, the Alaska Supreme Court struck down the personnel rule which provided for durational residency requirements.

Eggert v. City of Seattle, 81 Wash.2d 840, 505 P.2d 801 (1973), also dealt with the durational residency requirement contained in the City of Seattle Civil Service Rules. The Court, after reviewing the important Supreme Court decisions, said:

> . . . It is clear, however, that in the case before us, the durational residency requirement does penalize recent

> travel by completely and unconditionally depriving those recently migrated to the city, regardless of their status as bona fide residents, of the right to apply for employment. . . . 505 P.2d at 805.

Accordingly, the Washington Court found that Seattle's Civil Service Rule which required a one year residency before applying for civil service status constituted a denial of equal protection as guaranteed under the Fourteenth Amendment.

Ector v. City of Torrance, 104 Cal.Rptr. 594 (1972), involved the situation where Mr. Ector was employed by the city as a librarian. Mr. Ector was discharged for the sole reason that he was not and did not intend to become a resident of the City of Torrance. The Court of Appeals, after reviewing Shapiro v. Thompson, supra, announced that the City of Torrance had not shown a compelling interest for imposing the durational residency requirement and, as such, the discharge of the appellant was unlawful and constituted a deprivation of his freedom of travel under the Fourteenth Amendment. See also: Stirrup v. Mahan, 290 N.E.2d 64 (Ind. 1972).

Krzewinski v. Kugler, 338 F.Supp. 492 (D.C. N.J. 1972), dealt specifically with firemen and a durational residency requirement. The Court also enunciated the general principle that durational residency requirements constituted a denial of constitutionally guaranteed rights unless the state was able to show a compelling interest for the imposition of those requirements. In that particular case, the court found residency requirements to be valid as to policemen and firemen because of the unusual nature of their duties as well as the unusual nature of the relationship between inhabitants of the municipality and the policemen and firemen. Absent a situation such as that presented in Krzewinski v. Kugler, residency requirements are probably invalid.

The guidelines and standards which have been established in the above-cited Supreme Court decisions are clear in that, before durational residency requirements will be sustained, the state or city must demonstrate a compelling interest for those requirements. Generally,

the courts which have addressed this problem have been reluctant to find that compelling state interest and, as such, have stricken down any durational residency requirements on a constitutional basis. Krzewinski v. Kugler, supra, provides some guidance as to the comments in your letter. Hopefully, I have supplied answers to some of your questions.

Sincerely,

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